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December 12, 2003

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Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
Office of the Secretary
445 Twelfth Street, SW
Washington, DC 20554

Re: *Ex Parte* Presentation Notice: ET Docket No. 00-258;
WT Dockets Nos. 03-66, 02-55, 02-68, 02-353

Dear Secretary Dortch:

On December 10 and 11, 2003, Billy J. Parrott, President and CEO of Private Networks, Inc. ("PNI") and the undersigned, with James E. Lindstrom, President and CEO of Broadcast Data Corp. ("BDC") participating via telephone, met with the FCC personnel listed below. Mr. Parrott and Mr. Lindstrom are principals of the Ad Hoc MDS Alliance ("Ad Hoc").

December 10, 2003

Barry Ohlson, Legal Advisor, Office of Commissioner Jonathan S. Adelstein;
R. Paul Margie, Legal Advisor, Office of Commissioner Michael J. Copps; and
Sam Feder, Legal Advisor, Office of Commissioner Kevin J. Martin.

December 11, 2003

Sheryl J. Wilkerson, Legal Advisor, Office of Chairman Michael K. Powell;
Jennifer Manner, Special Counsel, Office of Commissioner Kathleen Q. Abernathy;
Trey Hanbury, Special Counsel, and Elizabeth Lyles, Attorney-Advisor, Office of General Counsel;
David Furth, Associate Bureau Chief and Counsel, Aaron Goldberger, Legal Advisor, Office of the Bureau Chief, Uzoma C. Onyeije, Legal Advisor, Office of the Bureau Chief, John J. Schauble, Deputy Chief, Broadband Division, and Michael J. Wilhelm,



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Acting Deputy Division Chief, Legal, Genevieve E. Ross, Attorney-Advisor, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau; Bruce Franca, Deputy Chief, Geraldine A. Matisse, Deputy Chief, Policy and Rules Division, and Jamison S. Prime, Attorney-Advisor, Office of Engineering and Technology.

Ad Hoc is a coalition of approximately fifteen small and/or minority-owned MDS licensees including PNI and BDC and should not be confused with other interested parties with Ad Hoc as part of their name. Ad Hoc members represent 65% of the MDS Channel 2 grandfathered licenses and some have secured additional MDS spectrum in the FCC's BTA MDS Auction #6 in 1996 or on the secondary market. Several, however, only have MDS Channel 1 or 2.

The purpose of the meetings was to present a new "Global Solutions" proposal ("Global Solutions Proposal") to address the public safety interference issue, the relocation of MDS 2150-2162 MHz band, and to help expedite the development of AWS as well as provide increased AWS spectrum now. The policy, legal and technical issues involved in these inter-related proceedings have a very significant impact on Ad Hoc members, which have suffered considerable harm given prolonged regulatory uncertainty since the relocation of MDS was first proposed several years ago.

Ad Hoc's Global Solution Proposal does not supercede Ad Hoc's or The Wireless Communications Association International, Inc.'s ("WCA") previous proposals or comments on the record. Ad Hoc continues to believe that there are other viable solutions to resolving the public safety interference issues other than granting the Nextel Consensus Plan, which includes Nextel's re-allocation to the 1.9 MHz Block, also known as the G Block. In fact, in the spirit of cooperation and proactive efforts to assist the Commission in resolving its predicament with MDS' forced relocation, Ad Hoc, with the support of WCA, was the first to champion the 1900 MHz band as a viable relocation alternative and invested significant resources for engineering analyses to support its initial technical assessment. Obviously, Ad Hoc members' survival hinges on a favorable resolution of the public safety issues so that the G block is available.

The Global Solutions Proposal was submitted for consideration by the FCC if the FCC decided that it would need to reband the 800 MHz block to resolve the public safety interference issues. This proposal was a continuation of Ad Hoc's good faith efforts to offer solutions that can benefit most, if not all, interested parties. Ad Hoc also recognized that there are several issues that need to be addressed in this proposal but welcomes productive comments, the exploration of other alternatives and an opportunity to build a consensus, if possible. Hopefully, all of the other affected parties have an interest in resolving these matters in a way that will reduce potential legal challenges that will not delay the development of AWS.



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In brief, the Ad Hoc Global Solutions Proposal provides for the following:

- Re-configure the 800 MHz band along the lines advocated by the Consensus Plan. Reallocate 2.155-2.180 GHz for AWS or some other broadband service immediately.
- Grant 10 MHz of AWS spectrum (5/5 paired) to Nextel in exchange for the spectrum Nextel previously offered to return to the Commission, plus Nextel's payment of 100% of the funds necessary to cover all of the expense of re-banding the 800 MHz Band.
- Relocate MDS Channels 1 & 2 to the only comparable spectrum available, the G Block (1.9 MHz).
- Re-auction the spectrum Nextel returns to the Commission and/or allocate additional spectrum to public safety.

Consistent with Ad Hoc and WCA's filings on the record, Ad Hoc also discussed the policy, technical and legal infirmities of the various proposals under consideration for relocation of MDS Channels 1 and 2.

Ad Hoc fully understands that these are very important and complex issues. Therefore, Ad Hoc stressed in its meetings that it is critical that the FCC have a full complement of options to consider and all available resources at its disposal to assist in addressing the issues in each proceeding and particularly, how those issues are inter-related. Ad Hoc reminded the FCC that it recognized the need to have increased options in its public safety NPRM, stating that: "Our primary objective in this proceeding is to explore all available options and alternatives for improving the spectrum environment for public safety operations in the 800 MHz Band." *In re Improving Public Safety Communications in the 800 MHz Band; Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels*, WT Docket No. 02-55, *Notice of Proposed Rulemaking*, para. 3 (rel. March 15, 2002) (emphasis added). In the NPRM, the Commission also remarked that such options and alternatives for relocation of spectrum for Nextel were "not limited" to spectrum blocks proposed at that time. *Id.*, para. 49.

Notwithstanding this specific proposal, Ad Hoc respectfully submitted that the FCC's recent adoption of the Report and Order on Service Rules for Advanced Wireless Services in the 1.7GHz and 2.1 GHz Band, WT Docket No. 02-353, FCC 03- 251 (rel. Nov. 25, 2003) ("AWS Service Rules Order"), limits the Commission's ability to explore all available options and alternatives. Indeed, this premature decision on AWS restricts the Commission's ability to look at the big picture of inter-related issues. Ad Hoc suggests that the Commission's immediate reconsideration of the AWS Service Rules Order would provide the necessary flexibility to fully consider all possible options and alternatives, including this proposal, consistent with the FCC's stated intent. After the public safety proceeding and the MDS relocation proceedings have been



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addressed by reasoned decision-making, the FCC can then adopt Service Rules for AWS. There is no hurry. Most assuredly, AWS will not advance in the near or far term until these issues are resolved.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), this *ex parte* notification and the attachment are being filed electronically for inclusion in the public record of the above-referenced dockets. Carbon copies ("cc") will be delivered via courier.

Please contact the undersigned if you have questions or comments.

Sincerely,

/s/ S. Jenell Trigg

S. Jenell Trigg
Counsel to Private Networks, Inc.

Attachment

cc: Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Jonathan S. Adelstein
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Sheryl J. Wilkerson
Jennifer Manner
Barry Ohlson
R. Paul Margie
Sam Feder
Bruce A. Franca
Geraldine A. Matisse
Jamison S. Prime
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